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No. 102] NEW DELHI, THURSDAY, APRIL 30, 1953

ELECTION COMMISSION, INDIA NOTIFICATION

New Delhi, the 25th April 1953

S.R.O. 822.—WHEREAS the election of Shri Krishna Chandra Gupta, as a member of the Legislative Assembly of the State of Uttar Pradesh from the Sitapur South-East Constituency of that Assembly, has been called in question by an Election Petition duly presented under Part VI of the Representation of People Act, 1951 (XLIII of 1951) by Shri Bhola Nath son of Shri Ganga Prasad, Mohalla Thompsonganj, Sitapur, District Sitapur (Uttar Pradesh) ;

AND WHEREAS the Election Tribunal appointed by the Election Commission in pursuance of the provisions of section 86 of the said Act for the trial of the said petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Election Commission ;

NOW, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, FAIZABAD

PRESENT :

Sri D. N. Roy.—*Chairman.*
Sri A. Sanyal.—*Member.*
Sri M. U. Faruqi.—*Member.*

ELECTION PETITION No. 267 OF 1952

Sri Bhola Nath S/o Ganga Prasad, resident of Mohalla Thompsonganj, Sitapur, Town, Tehsil and District Sitapur (U.P.)—*Petitioner*

Versus

1. Sri Krishna Chandra Gupta.
2. Sri Nawabzada Halder Ali Khan.
3. Sri Jagdish Chandra.
4. Sri Nawal Behari.
5. Sri Surya Datt.
6. Sri Chandrika Prasad.
7. Sri Gulzari Lal.
8. Sri Shyam Kishore.
9. Sri Gur Narain.—*Respondents.*

JUDGMENT

The petitioner Sri Bhola Nath and the opposite party Sri Krishna Chandra Gupta were nominated candidates for election to the Legislative Assembly of Uttar Pradesh from Sitapur South-East Constituency for the general election held in 1951-52. The petitioner contested the election on the Bhartiya Jan Sangh ticket. Sri Krishna Chandra Gupta Respondent No. 1 contested it on the Congress ticket. The other opposite parties contested the election on behalf of other political parties. The Constituency is a single member Constituency. As a result of the election held on the 22nd of January 1952, the opposite party No. 1 *viz.*, Sri Krishna Chandra Gupta was declared by the Returning Officer to have been duly elected. The petitioner challenged the election of Sri Krishna Chandra Gupta and prayed that his election be declared null and void and that the petitioner be declared to be duly elected. The election has been challenged on the ground that the nomination paper of the opposite party No. 1 was improperly accepted by the Returning Officer in as much as the opposite party No. 1 was disqualified under section 7 (d) of the Representation of the People Act 1951, because the Deputy Commissioner, Sitapur acting on behalf of the U.P. Government and with the object of the utilization of *Parti* land for cultivation under section 3 clause (4) of the U.P. Land Utilization Act No. V of 1948 let out certain plots of land specified in the petition to Sri Krishna Chandra Gupta Respondent No. 1 on Rs. 167-9-0 per year as rent ; that section 4 of that Act provides that Sri Krishna Chandra Gupta who is the tenant and is cultivating such land shall on demand by the Collector sell to the State Government one-half of the grain produced over the land mentioned above at such rate as may be fixed by the State Government from time to time ; that under the obligation aforesaid Sri Krishna Chandra Gupta has a share and interest in a contract for the supply of goods to, or for the performance of services undertaken by the U.P. Government ; that Sri Krishna Chandra Gupta is further disqualified by reason of the fact that he holds an office of profit under the U.P. Government as a member of the Legislative Assembly where he has been drawing a salary of Rs. 200 per month from the Government ; that the U. P. Government has not passed any Removal of Disqualification Act for the members of the U.P. Legislative Assembly as has been done by other States ; that consequently the nomination paper of Sri Krishna Chandra Gupta should have been rejected by the Returning Officer ; that the wrongful inclusion of the name of Sri Krishna Chandra Gupta in the list of validly nominated candidates has materially affected the result of the election ; that the nomination paper of opposite party No. 1 was also invalid because he had not appointed an election agent previous to the filing of the nomination paper as contemplated by section 40 of the Representation of the People Act 1951 ; that the type of ballot boxes used for the election in this Constituency, better known as "U.P. Type Boxes" were thrice rejected by Election Commission of India as being unacceptable for the purpose of this election, but they were ultimately accepted without any material alteration ; that the boxes were not sealed and locked according to the instructions issued in that behalf and they could be opened after they had been used at the election without the seals being broken ; that the ballot boxes of the petitioner and of the other parties, except the Congress candidate, were in fact tampered with and votes from their boxes were taken out and put into the boxes of Respondent No. 1 ; that the proof of this matter is furnished from the analysis of the serial number of ballot papers found in the boxes of Respondent No. 1 and the statement prepared in Forms 14 and 15 and the Ballot Paper Account together with the Statement of Voters to whom those serial numbers of the voting papers were issued ; that at the time of the polling Ballot Paper Accounts were not properly prepared by the Presiding Officers and these accounts were not shown to the petitioner or to the other non-Congress candidates at the time of counting in spite of demand ; that many wrong ballot papers had been admitted and many more were not rejected though actually they were not authorised for that particular booth ; that during the counting of votes the provisions of Rule 46 of the Representation of the People (Conduct of Election and Election Petitions) Rules were not followed as specified in paragraph 24 of the petition ; that many irregularities occurred at the time of the counting and on the date of polling which were brought to the notice of the Presiding and Returning Officers, but they did not pay any heed to the same ; that the petitioner's ballot boxes had been sealed by his agents on different polling booths, but at the time of counting many seals were missing and the Returning Officer did not stop the counting though the fact was notified to him ; that the Election Expenses Return is *prima facie* incorrect as the opposite party No. 1 has not shown the cost of the general stamp regarding the declarations ; that the cost of Polling Agent Forms and Counting Agents Forms and Election Expenses Return Forms have not been shown in the Return ; that the Return disclosed that a fee was paid by Respondent No. 1 to a lawyer at the time of scrutiny of the nomination which should not have been shown in the Return in view of the provisions of Schedule VI framed under Rule 118 of the Representation of the People (Conduct of Elections and Election Petitions) Rules 1951 ; that the ballot paper account supplied by the Presiding Officers at different Polling Stations disclosed that the ballot papers found in the boxes did not tally with the statement prepared by the Presiding Officers ; that an examination of the Ballot Paper Account discloses that more ballot papers have been found in the boxes than were issued at particular polling stations ; that the number of Ballot Papers found in the boxes were at certain Polling Stations lesser than the total number of Ballot Papers issued for polling ; and that on account of these irregularities and corrupt practices, the election of Respondent No. 1 is vitiated.

The Respondents were duly served, but only Sri Krishna Chandra Gupta Respondent No. 1 and Sri Nawal Behary Respondent No. 4 have entered appearance and have filed their writte

statements. The former alone has contested the petition. The latter *viz.*, Sri Nawal Behary has lent support to the petition of Sri Bhola Nath. Sri Krishna Chandra Gupta admitted that the Deputy Commissioner, Sitapur, let out the plots mentioned in the petition to him under section 3 clause (4) of the U. P. Land Utilization Act 1948 at a rental of Rs. 167-9-0 per year, but he contended that it did not entail any disqualification from being chosen as a member of the U.P. Legislative Assembly. Sri Krishna Chandra Gupta further admitted that he has been a member of the Legislative Assembly since 1948 and has been receiving an allowance of Rs. 200 per month as such besides the usual travelling allowance and halting allowance, but he contended that that too did not bring him within the purview of the words "holding an office of profit under the Government" within the meaning of Articles 102 and 191 of the Constitution of India so as to entail a disqualification. The other grounds raised by the petitioner have been traversed by Respondent No. 1 and he has contended that he has been rightly nominated and elected. Nine issues were framed in the case which were as follows :—

- (1) Is the petition liable to be rejected for want of proper verification ?
- (2) Is the petition liable to be rejected for non-compliance with the provisions of section 83 (2) and section 117 of the Representation of the People Act ?
- (3) Are the allegations of corrupt and illegal practices in Paras. 27 to 36 vague and indefinite and should not be entertained for that reason ?
- (4) Can the allegations of corrupt and illegal practices in Paras. 27 to 36 be entertained in the absence of a list of such practices and in the absence of proper verification of such list as required by section 83 (2) of the Act ?
- (5) Was the Respondent No. 1 disqualified from being chosen as a member of the U.P. Legislative Assembly as alleged in Paras. 12 to 17 of the petition ?
- (6) Was the nomination paper of Respondent No. 1 invalid for the alleged reason that he has not appointed any election agent previous to the filing of his nomination paper as contemplated by section 40 of the Act ?
- (7) Are the allegations in Paras. 19 to 26 and 37 to 39 true ? And if so, was the result of the election materially affected by such facts or any of them ?
- (8) Are the allegations relating to corrupt and illegal practices contained in Paras. 31 (a), (b), (c) and (e) true ? If so, was the result of the election materially affected ?
- (9) To what relief, if any, is the petitioner entitled ?

The preliminary issues Nos. 1 to 4 and 6 were heard and were disposed of by us by our findings dated 17th January 1953. These findings are contained in Annexure "A" of this judgment and we would not reproduce them here. These findings necessitated an amendment of issues Nos. 7 and 8. Issues Nos. 7 and 8 as stated above stand in their amended form.

We are therefore now left with the determination of issues Nos. 5, 7, 8 and 9 for the purposes of this case. We shall take up issue No. 5 at this stage.

The petitioner contends that Sri Krishna Chandra Gupta Respondent No. 1 is disqualified from being chosen as a member for the Legislative Assembly of U.P. and was hit by the provisions of section 7 (d) of the Representation of the People Act 1951 in-as-much as the Deputy Commissioner, Sitapur acting on behalf of U.P. Government granted him a lease under section 3 clause (4) of the Land Utilization Act No. V of 1948 on a yearly rental of Rs. 167-9-0 and under the provisions of section 4 of that Act, Sri Krishna Chandra Gupta as a tenant has to sell to the State Government on demand by the Collector half of the grain produced over the land at such rate as may be fixed from time to time. The petitioner contends that Sri Krishna Chandra is disqualified also on the ground that he holds an office of profit under the U.P. Government as a member of the Legislative Assembly drawing a salary of Rs. 200 per month and is therefore hit by Articles 102 and 191 of the Constitution of India. And in this connection it has further been stated in the petition that "the U.P. Government has not passed any Act removing the disqualification of its members as has been done by other States." It has been urged on behalf of Respondent No. 1 that the lease under section 3 clause (4) of the U.P. Land Utilization Act V of 1948 and the provisions of section 4 of that Act would not attract the provisions of section 7 (d) of the Representation of the People Act, 1951. It has further been urged that salary and allowance paid to the members of the State Legislature would not bring them within the scope of holding "an office of profit under the Government" so as to attract the operation of Articles 102 and 191 of the Constitution of India. Before we proceed to consider the validity of the contentions advanced by the respective parties we would state here what these different provisions of the Acts are. Section 7 (d) of the Representation of the People Act, 1951 lays down that a person shall be disqualified for being chosen as, and for being, a member of a Legislative Assembly, if, whether by himself or by any person or body of persons in trust for him, or for his benefit, or on his account, he has any share or interest in a contract for the supply of goods to, or for the execution of any works, or the performance of any services undertaken by, the appropriate Government. The question would therefore be whether the lease brought about in favour of Respondent No. 1 under section 3 (4) of the U. P. Land Utilization Act V of 1948 and the provisions of section 4 of that Act would bring Respondent No. 1 within the mischief of section 7 (d) of the Representation of

the People Act 1951. Section 3 of the U. P. Land Utilization Act, 1948 *inter alia* says that notwithstanding anything contained in the United Provinces Tenancy Act, 1939, or any other enactment for the time being in force, the Collector may, by notice in writing in the form specified in the Schedule, call upon the landlord of any land situated within his jurisdiction, which is not grove land or land let to or held by a tenant, and which has not been cultivated or, if previously cultivated, has not been cultivated during the *Rabi* and *Kharif* immediately preceding the commencement of this Act to let out such land or pre-arrange for the cultivation thereof within fifteen days from the date of the service of such notice or within such further period as the Collector may extend. The notice aforesaid is required to be served on the landlord in the manner provided by that section. The section further lays down that if the landlord within one week from the date of the service of the notice shows to the satisfaction of the Collector that the land is not capable of being cultivated, or that it is already being cultivated or has been let out for cultivation, the Collector shall cancel the notice. Clause (4) of that section says that if the notice is not complied with within the time allowed under sub-section (1) or is not cancelled under sub-section (3), the Collector may get such land cultivated on behalf of the Provincial Government for such period as he thinks necessary or may let out such land to a tenant for cultivation. Section 4 of the U.P. Land Utilization Act, 1948 says that where any land is brought under cultivation in accordance with the provisions of this Act, the landlord or the tenant cultivating such land shall, on demand by the Collector sell to the Provincial Government one-half of the grain produced over such land at such rates as may be fixed by the Provincial Government from time to time. The relevant documents concerning this lease are Exs. H, G, and K on the record. Ex. H is an application, dated the 7th of January 1951 by Respondent No. 1 to the Deputy Commissioner, Sitapur by which Respondent No. 1 applied to the Deputy Commissioner that since the policy of the Government was to utilize uncultivated land with a view to increasing the production of foodstuffs, the land in question should be utilized for such purpose and should be given to him on lease. The Collector gave the landlord the requisite notice under section 3 of the Act and thereafter passed the order Ex. K on the 15th of February 1951 which was to the following effect :—

“As the landlord has failed to let out the land in compliance with the notice under section 3 of the Act it is let out to Sri Krishna Chandra Gupta, M.L.A. on Rs. 167-9-0 per annum. Let necessary entries be effected in the papers.”

On the basis of the order passed by the Collector, the Sub Divisional Officer, Sitapur passed the order Ex. G dated 24th of February 1951 directing the Tahsildar to make necessary entries in the record of rights. The petitioner's contention is that all these factors would bring Respondent No. 1 within the scope of the provisions of section 7 (d) of the Representation of the People Act and he has contended that it is a contract with the Government express or implied. On the other hand it is contended by the Respondent that there was no contract, either express or implied, between Respondent No. 1 and the Government; that this transaction lacks all the elements of a valid contract as known to law; that a contract must be a contract with the volition of the parties and not by operation of such penal provisions of law; that once the order Ex. K came into effect Respondent No. 1 became by operation of law the tenant of the landlord and has to pay to him Rs. 167-9-0 per annum as rent; that the Deputy Commissioner, Sitapur was the agent of the landlord by force of statute; that there is no continuing relationship between the Deputy Commissioner, Sitapur and Respondent No. 1 as promisor and promisee and the Deputy Commissioner, Sitapur became *functus officio* after the date of that order; that the provisions of section 4 of the U.P. Land Utilization Act No. V of 1948 are no part of the contract of tenancy but provided for a method of acquisition of part of the produce of the soil by the Collector after the land is brought under cultivation in accordance with the provision of the Act, a breach of which does not give rise to a suit for damages but is penalized under section 7 of that Act with imprisonment for a term which may extend to six months or with fine or with both and that any such conditions imposed by a statute would not be a contract. We have examined Exs. G, H and K and the oral evidence bearing upon these questions, and we have also examined the different sections quoted above, and we are of opinion that the transaction in question is not a contract, express or implied between Respondent No. 1 and the U. P. Government. It lacks all the elements of a valid contract. We may cite here the decision in *K. Perumal Mudaliar Vs. Province of Madras* (A.I.R. 1950 Madras 194), *Debi Prasad Sri Krishna Prasad Ltd. Vs. Secretary of State* (A.I.R. 1941 Allahabad 377) and also the decision in 51 Calcutta Weekly Note 753 and 84 Calcutta Law Journal, 275 and A.I.R. 1947 Federal Court 38 and the provision of section 175 (3) of the Government of India Act, 1935 which bear upon the question as to how contracts with the Government should be made in order to have a binding effect. If the transaction in the present case is to be considered as a contract with the Government, it does not satisfy the provisions of law discussed in these cases. In Election Petition No. 1 of 1951, *Parbhoo Das Ramjibhai Mehta Vs. Lalloobhai Kishoredas Maniar* decided by the Bhavnagar Election Tribunal on the 23rd of June 1952, a similar question came to be considered in relation to a registered stock-holder in Shaurashtra in iron and steel where it was contended that such a registered stock-holder had an interest or share in the performance of services undertaken by the Shaurashtra State, and where it was further contended that there was an implied contract between the stock-holder and the Shaurashtra Government for the performance of such services, and it was held that in a conception of a “contract” there is always a volition of the parties contracting and also provision for breaches of the terms and conditions agreed to between the parties; that under the Iron and Steel Control Order there was no provision for the breach of the contract, but it was a statute which created

offences for breach and provided for the punishment of such breaches and everything was being done in conformity with and in pursuance of the said enactment and the rules framed thereunder ; and that under the circumstances no volition was left to the parties to go against the provisions of the law or the rules made thereunder without incurring the punishment provided therein and that therefore there was no implied contract between the stock-holder and the Shaurashtra Government in carrying out or performing the several functions under the Iron and Steel Control Order and that it was simply the "enforcement of the law enacted and not the performance of the services as contemplated under section 7 (d) of the Representation of the People Act, 1951." The same observations would apply with equal force to the facts of the present case. The terms and conditions bearing upon this question in the present case lack mutuality. There was no volition on the part of the landlord when the Deputy Commissioner of Sitapur granted the lease on his behalf and gave the land to the Respondent No. 1 under the provisions of the statute. The U.P. Land Utilization Act No. V of 1948 does not contain anything for the breach of the provisions of section 4 beyond what is contained by way of punishment in section 7. No volition was left to the parties to go against the provisions of law without incurring a punishment provided therein. We are therefore of opinion that there was no express or implied contract between Respondent No. 1 and the U.P. Government for the supply of goods to, or the execution of any works, or the performance of any services undertaken by the Government so as to bring Respondent No. 1 within the mischief of section 7 (d) of the Representation of the People Act 1951.

We are not oblivious of the English and Indian decisions bearing upon the general policy provided for the disqualification stated under clause 7 (d) of the Representation of People Act, 1951 against persons chosen for membership of democratic Legislative bodies. The decisions have a value for the light they throw upon the policy with which democracy guards the freedom and independence of its elected representatives. The principle that no person should be elected if there will be likelihood of a conflict between his duty and interest need not be doubted at all. But we cannot at the same time overlook the principle which we have to observe in interpreting the disqualification clause in an enactment. The disqualification clause should be very strictly construed because it is penal in nature.

Learned counsel for the petitioner has relied upon two English decisions in support of his contention that a contract may be created by statute without the volition of the parties. The first of these decisions is to be found at page 414 in the Law Journal Reports for the year 1851, Volume XX (New Series)—Part II containing the cases of Common Law ; and the other decision is a decision of the House of Lords in the Countess of Rothes Vs. The Kirkcaldy and Dysart Water Work Commissioners reported in Volume VII of the Law Reports containing Appeal Cases before the House of Lords and the Judicial Committee of the Privy Council at page 694. We have examined the facts of these cases and the law propounded in them and we are of opinion that we cannot draw the analogy of those cases, since the facts of the present case and the law bearing upon it are entirely different.

Learned counsel for the petitioner has relied upon an observation contained at page 508 of the Election Tribunal of Cuttack in Election Petition No. 118 of 1952 (published at page 504 in the *Gazette of India Extraordinary*, Part II Section 3, dated February 24 of 1952, where it was observed at page 508 as follows :—

"We think, therefore, that the word "contract" is used in a comprehensive and a popular sense. It is meant to embrace all cases where a person agrees to supply goods to the Government. We think that in construing clause 7 (d) of the Act we are not fettered by the technical rules of law in the Indian Contract Act regarding formation of contracts and that words employed in statutes regulating the qualifications for entry into legislatures are proper subject-matter for beneficial construction that would advance the object of the statute."

We are unable to give that interpretation to the word "contract" under section 7 (d) of the Representation of People Act and our view is supported by the decision of the Bhavnagar Tribunal in Election Petition No. 1 of 1951 cited above where it has been held that the words of the statute must be strictly construed. The majority of our Tribunal took a similar view in their decision in Election Petition No. 272 of 1952 *Sri Hanuman Prasad Misra Vs. Sri Tara Chand* and others. The Shillong Election Tribunal in Election Petition No. 28 of 1952, *Horen Jones Vs. Moham Singh* and others, (*Gazette of India Extraordinary*, Part II Section 3, dated 11th December 1952) observed at page 944 that section 7 (d) of the Representation of the People Act is a disabling enactment and it is well settled that an enactment of this kind must be strictly construed. The Tribunal relied upon Article 299 of the Constitution of India which required that an agreement had to be expressed in writing as made by the Governor or some body on his behalf and as authorised by him, before it may be a "contract" to which the Government may be legally held to be a party. The Tribunal further held, relying upon the decision in 51 Calcutta Weekly Note 753 that this provision was mandatory and that when a statute provided a particular method by which a contract should be made there must be a compliance with the provision of the statute. This is wanting in the present case altogether. Here there was no contract in law with the appropriate Government for the supply of the grain, but it was an obligation imposed by section 4 of the U. P. Land Utilization Act No. V of 1948.

The decision of the Bombay Tribunal in Election Petition No. 66 of 1952 (published in *Government of India, Gazette Extraordinary*, Part I, Section 1, page 2295, dated the 16th of October 1952) in *Sri Shankar Nana Sahab Karpe Vs. Maruti Sitaram Sawant and others* and of the Vellore Tribunal in Election Petition No. 109 of 1952 in *Dr. Kannabiran Vs. Sri A. J. Arunachalam* (published in the *Gazette of India Extraordinary*, Part II, section 3, dated 17th of December 1952) relied upon by the petitioner cannot be attracted to the facts of the present case. We are therefore of opinion that Respondent No. 1 was not hit by the provisions of section 7 (d) of the Representation of the People Act 1951 in relation to the lease granted in his favour under section 3 clause (4) of the U. P. Land Utilization Act No. V of 1948 or in relation to the provisions of section 4 of that Act.

The next question which has been urged before us is that Respondent No. 1 was disqualified on the ground that he was a member of the Legislative Assembly of Uttar Pradesh since the year 1948 and has been drawing a salary of Rs. 200 per month from the Uttar Pradesh Government, besides other allowances, and consequently he has been holding an office of profit under the U.P. Government and is hit by the provisions of Articles 102 and 191 of the Constitution of India. It is admitted by Respondent No. 1 that he has been a member of the U.P. Legislative Assembly since 1948 and has been drawing Rs. 200 per month besides other allowances. His contention however is that it does not entail a disqualification for being a member of the Legislative Assembly because he is not holding "an office of profit under the U.P. Government". Under Article 195 of the Constitution of India, it is provided that members of the Legislative Assembly and the Legislative Council of a State shall be entitled to receive such salaries and allowances as may from time to time be determined by the Legislature of the State by law, and, until provisions in that respect is so made, salaries and allowances at such rates and upon such conditions as were immediately before the commencement of the Constitution applicable in the case of members of the Legislative Assembly of the corresponding Province. If we look into the frame of the Constitution of India, we would find that the disqualification which attached to the Ministers for the Union or for the States by reason of their holding "an office of profit under the Government of India or the Government of the State" was removed under the Constitution itself by reason of the provisions of Articles 102 and 191 of the Constitution. Articles 106 and 195 of the Constitution provided for salary and allowances of members of the House of Parliament and members of the Legislative Assembly and the Legislative Council of a State. In these Articles we do not find any such provision regarding the removal of disqualification as in the case of the Ministers as contained in Articles 102 and 191. The framers of the Constitution would not have framed Articles 106 and 195 in the manner that they did if they had in contemplation that the members of the House of Parliament and of the State Legislature hold "an office of profit under Government". For, in that event, they would have incorporated in Articles 106 and 195 of the Constitution, provisions similar to those in Articles 102 and 191 in the case of the Ministers for the Union and Ministers for the States. If the argument advanced on behalf of the petitioner on this question is to be accepted *viz.*, that the members of the U.P. Legislative Assembly hold an "office of profit under the Government," it would bring the whole matter into an absurdity; for, in that event, a member who was a member of the previous Legislative Assembly would enter with a disqualification, and a new member would be disqualified as soon as he entered the new Legislative Assembly. Such a proposition as has been advanced by the learned counsel for the petitioner has only got to be stated to show that it bears no force whatsoever. We have already stated above that in para. 17 of the petition, the petitioner alleged that the U.P. Government had not passed any Act for the removal of disqualification of the members of its Legislature as had been done by other States. We are not aware of any such legislation having been passed by any State by which it may be suggested that the members of the Legislative Assembly have been held to be holding an "office of profit under the Government" and where the alleged disqualification has been removed by any Act of the Legislature. No such Act has been produced before us. And learned counsel for the petitioner conceded that the allegation on this point in para. 17 of the petition is not correct and was by way of a mere "flourish in the art of pleadings".

The words "office" and "profit" have nowhere been defined in the Representation of the People Act, 1951 or in the Constitution of India. We have therefore to rely upon the dictionary meaning of these words. An exactly similar question came to be considered by the Election Tribunal of Bombay in Election Petition No. 72 of 1952, *Yograj Singh Shankarsing Parihar Vs. Sitaram Hirachand Birla and others*, (*Gazette of India Extraordinary*, dated 5-2-1953, Part II, Section 3, page 285), and it was held at page 295 of the report that the membership of the outgoing assembly at the date of the election was "an office" and that what Respondent No. 1 received as salary was "profit", but the position held by Respondent No. 1 cannot be deemed to be "an office of profit under the Government", which was intended to disqualify a person either from being chosen, or for continuing as a member of the Legislature. The office of the Legislator cannot in our opinion be deemed "under the Government", for unless that office can be deemed to be an "office of profit under Government" there would be no disqualification under Article 191 of the Constitution of India. A reference to Articles 191 to 193 and 195 would support us on this point. Article 191 refers to "an office of profit under the Government of India or the Government of any State".

The expression "State Government" has been defined in the Indian General Clauses Act. Section 3 (60) and definition (b) therein is :

"As respects anything done or to be done after the commencement of the Constitution shall mean, in a Part A State, Governor, in a Part B State, the Raj Pramukh, and in a Part C State, the Central Government".

This indicates that the term "Government" as used in Article 191 of the Constitution was intended to be synonymous in Part A States with the Governor, and, therefore, office of profit under the Government means one under the Governor. In fact it will be seen that while in the case of all Government servants the powers are exercised by the Governor, in the case of the members of the Legislature the powers are exercised not by the Governor but by the Speaker. That the remuneration received as an elected member of the Legislative Assembly could not have been deemed to be a disqualification under Article 191 of the Constitution of India is very clear if Article 193 is read. It will appear from Article 193 that a penalty is prescribed for continuing to sit in the Assembly where a member sits and votes without making oath, or when he incurs disqualification as mentioned in Article 191. If under Article 195 member to receive a salary, and if that salary were to be regarded as "profit while holding office under the Government", it would mean a disqualification under Article 191. If such were the meaning to be attached to the salary, it means that immediately after election as soon as a member receives salary as provided in Article 195 he would become disqualified under Article 191 to sit and vote so as to incur penalties mentioned in Article 193. It would never have been intended by the framers of the Constitution of India that a member elected to the Legislature should be disqualified immediately on election as soon as he receives salary. The inevitable conclusion, therefore, is that the disqualification mentioned in Article 191 was not intended to refer to salary received by an elected members of the Legislature, and therefore such a member receiving salary is not one who holds "an office of profit under the Government". Obviously therefore Respondent No. 1 was not holding "an office of profit under the Government" as contemplated by Articles 102 and 191 of the Constitution of India, so as to disqualifying him from being chosen at the date of the last election. The view that we take is supported by the decision of the Bombay Election Tribunal in Election Petition No. 72 of 1952 (published at page 285 of the Gazette of India Extraordinary Part II, Section 3 dated 5th February 1953), a reference to which has already been made above. Under Article 102(a) of the Constitution what is contemplated is *employment*, and nothing short of it. We are fortified in our view by Basu's commentary on the Constitution of India 2nd Edition, at page 346. The distinguished commentator, on the quotation from Blackstone, has based his commentary which suggests that "office of profit" must mean employment with "fees and emoluments thereunto belonging". This was the view taken by Mears C.J. and Pigott J. in *Mohomed Baksh Vs Muhammad Abdul Baqi Khan* (A.I.R. 1924 Allahabad 135). That decision involved an interpretation of the words "place of profit" used in the U.P. Municipalities Act.

Giving the matter our most careful and earnest consideration we are of opinion that Respondent No. 1 was not disqualified from being chosen as a member of the U.P. Legislative Assembly as alleged in paragraphs 12 to 17 of the petition and he was not hit by the provisions of section 7(d) of the Representation of the People Act 1951. This disposes of issue No. 5.

We now come to issue No. 8. It covers the question as to whether the allegations relating to corrupt and illegal practices contained in paras 13(a), (b), (c) and (e) are true? If so was the result of the election materially affected? In paragraphs 31(a), (b) and (c) of the petition it has been stated that the Election Expenses Return is *prima facie* incorrect as Respondent No. 1 has not shown therein the expenses of the general stamp regarding the declarations and the costs of Polling Agents Forms, Counting Agents Forms and the Election Expenses Return Form. Two general stamps containing the declarations were worth Rs. 4. Respondent No. 1 stated in evidence that he did not show these expenses in his Return of Expenses because he had been advised by his lawyers that the expenses upto the date of the election, viz., the 22nd of January 1952 were alone to be shown in the Return. He further stated that in regard to the cost of the Form for the Return of Election Expenses he had been advised by his lawyers that since that cost had been incurred after the date of the election, it had not to be shown in the Return. The cost of the Form was only nominal. Respondent No. 1 also stated that Form was given to him by the U.P. Congress Parliamentary Board and he had not had to pay for it. There is no reason to doubt the statement of Respondent No. 1 on this point. Respondent No. 1 also stated that he used nearly 600 Forms for the appointment of Polling and Counting Agents; that those Forms were saleable and were worth two pice each; that he had not had to pay for the same; and that they had been given to him by the District Congress Committee free of charge; and on that account he had not shown their price in the Election Expenses Return. He deposed that there could not have been any possible reason for withholding such expenses from the Election Expenses Return in as much as he could have made a total expense of Rs. 8000/- whereas his total expenses at this election came to about Rs. 6000/- only. We see no reason to disbelieve Respondent No. 1 and we are of opinion that the allegations contained in paras 31 (a), (b) and (c) of the petition do not amount to any corrupt and illegal practices and that the result of the election was not materially affected thereby.

A point which was not taken in the petition at all was advanced in argument and was based upon the statement given by the Respondent No. 1 at one place in his cross-examination. It was

in relation to the expenses incurred by the Respondent in going over to Delhi several times in connection with securing a Congress ticket for this election. These visits to Delhi were obviously prior to the date of the nomination and the election. The exact amount of these expenses were not elicited in cross-examination of Respondent No. 1 but they could not have been such that if included into the Election Expenses Return submitted by Respondent No. 1, the total would have exceeded the sum of Rs. 8000/- which was the limit upto which Respondent No. 1 could have gone. Respondent No. 1 stated that the expenses in going to Delhi for that purpose were not part of the election expenses. Whether or not we agree with his view, the fact remains that these expenses could not have been such that if included within the Election Expenses Return they would by any chance have swelled the amount to a total sum of over Rs. 8000/-. Consequently, in view of this consideration and in view of the fact that the point was not specifically taken as a ground of attack in the petition by the petitioner, we do not think that it was a corrupt or illegal practice so as to affect the result of the election materially.

In paragraph 31 (e) of the petition it was stated that Respondent No. 1 paid certain fee to a lawyer at the time of the scrutiny of his nomination paper and this fee should not have been paid by him and should not have been shown in the Return of Election Expenses because it was in violation of Schedule VI framed under Rule 118 of the Representation of the People (Conduct of Elections and Election Petitions) Rules 1951 and that such an appointment amounted to a major corrupt practice under section 123(7) of the Representation of the People Act, 1951. It is not disputed that at the time of the scrutiny of the nomination paper Respondent No. 1 had engaged Sri Mustafa Ali Vakil to be present before the Returning Officer and he had argued the matter on his behalf before the Returning Officer and he had been paid a fee of Rs. 100/- for that purpose. That fee is admittedly shown in the Election Expenses Return. It has been urged on behalf of the petitioner that since Schedule VI framed under Rule 118 of the Representation of the People (Conduct of Elections and Election Petitions) Rules 1951 specify the persons who may be employed for payment by candidates or their Election Agents in connection with the election and further specify that till elections, one Election Agent, one Counting Agent and one clerk and one messenger may be employed, the employment of Sri Mustafa Ali Vakil was unauthorised and consequently under section 123(7) of Representation of the People Act, 1951 the employment of Sri Mustafa Ali Vakil in contravention of the provisions of the Act or of the Rules made thereunder and the incurring of expenditure for him was unauthorised and amounted to a major corrupt practice. We are unable to agree with this view propounded on behalf of the petitioner. The engagement of a lawyer to represent Respondent No. 1 before the Returning Officer to argue the matter on his behalf at the time of the scrutiny of the nomination papers would not be "employment" within the meaning of that term in Schedule VI framed under Rule 118 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951. We are supported in this view if we look into the provisions of section 36 of the Representation of the People Act, 1951. That section lays down that on the date fixed for the scrutiny of the nominations, the candidates, their election Agents, one proposer and one seconder of each candidate and one other person duly authorised in writing by each candidate but no other person may attend at such time and place as the Returning Officer may appoint and the Returning Officer shall give them all reasonable facilities for examining the nomination papers of all candidates which have been delivered within the time and in the manner laid down under section 33. It further lays down that the Returning Officer after examining the nomination papers shall decide all petitions which may be made to any nomination and may on either such petition or on his own motion after such summary inquiry if any as he thinks necessary refuse any nomination on any of the grounds stated in section 36. Obviously therefore if under section 36 of the Representation of the People Act, 1951 Respondent No. 1 was authorised to get "one other person duly authorised in writing" (which in the present case was Sri Mustafa Ali Vakil), such a person would not come within Schedule VI of Rule 118 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951. Consequently it cannot be said that Schedule VI framed under Rule 118 is exhaustive and excludes the engagement of a lawyer at the time of the scrutiny of the nomination papers which was clearly permitted under section 36 of the Representation of the People Act, 1951. The fee paid to Sri Mustafa Ali Vakil was therefore legitimate and proper and would not be hit by the provisions of section 123(7) of the Representation of the People Act, 1951 and would not amount to a major corrupt practice.

We now come to issue No. 7 which is to the effect as to whether the allegations in paras 19 to 26 and 37 to 39 are true? If so, was the result of the election materially affected by such facts or any of them? The allegations contained in these paragraphs have been stated by us in detail in the earlier part of the judgment and we would not restate them here. Most of these allegations have neither been attempted to be proved by evidence nor were they seriously pressed in the course of the arguments. We would only consider those points under this issue which have been argued before us. In paragraph 19 of the petition it was stated that the type of ballot boxes used for election in this Constituency (better known as U.P. Type Boxes) were thrice rejected by the Election Commissioner of India as being unsuitable for the purpose of this election but they were ultimately accepted without any material alteration in the defects for which they had already been rejected. There is no evidence to support this contention. In the evidence of Sri D.P. Gupta, the Returning Officer who was also the District Election Officer and who has been produced as a witness on behalf of Respondent No. 1, we would find that the ballot boxes used at this election were sent by the Chief Electoral Officer, U.P. Government and these boxes were in accordance

with rules. He further stated that no objection was lodged by or on behalf of any candidate before him as against the use of these boxes. The averment contained in paragraph 19 of the petition cannot therefore be accepted as correct.

In paragraph 20 of the petition it has been stated that the boxes were not sealed and locked according to the instructions issued in that behalf by the Election Commissioner and the boxes could be opened after they had been used at the election without the seals being broken. In paragraph 21, it was stated that the ballot boxes of the petitioner and of other opposite parties except the Congress candidates were in fact tampered with and votes from their boxes were taken out and put into the box of Respondent No. 1. In paragraph 22, it was stated that the proof of this matter is to be had from the analysis of the serial numbers of ballot papers found in the box of Respondent No. 1 and the statement prepared in Forms 14 and 15 and the Ballot Paper Account together with the Statement of Voters to whom these serial numbers of voting papers were issued. The evidence of Sri D.P. Gupta shows that the ballot boxes were properly sealed and that the boxes could not have been opened without breaking the seals. He stated that at the time of the counting of votes the petitioner Sri Bhola Nath had contended before him that he would be able to demonstrate that the boxes could be opened without breaking the seals but the demonstration was not permitted by him because it was not allowed under the rules. At the request of the petitioner we allowed the demonstration to be done before us and a ballot box was sealed in our presence by Sri D.P. Gupta in accordance with the instructions contained in Rule 45 (ii) of the rules published by the U.P. Government on 15th of December 1951 containing instructions regarding conduct of General Elections in the House of People and the State Legislative Assembly. Sri D.P. Gupta had stated that the boxes had been closed and sealed in accordance with the said rule for "U.P. Type Boxes". The petitioner Sri Bhola Nath was thereafter asked to open the box without breaking the seals and after an attempt made by him he expressed his inability to do so. His contention was that the boxes were not sealed in accordance with the rule 45 (Part II) but in the fashion contained in the printed chart Ex. 14. This printed chart Ex. 14 contains diagrams and is only illustrative of how the ballot box is to be dealt with at the time of the polls and after the polls. But it does not override the instructions contained in the printed publication of the U.P. Government referred to above which gives in a detailed fashion instructions as to how the boxes are to be closed and sealed. In our opinion therefore the boxes at this election were sealed and locked according to the instructions issued in that behalf by the authorities and they could not have been opened without breaking the seals. In this particular case the seals were not broken and consequently it cannot for a moment be urged that the boxes were tampered with or that the votes from the boxes of other candidates inclusive of the petitioner were taken out and put into the boxes of Respondent No. 1. The evidence of Sri D.P. Gupta, the Election Officer supports the same view. In fact he deposed that no objection had been raised before him to the effect that the ballot papers from one box were taken out and put into another. His statement is further to the effect that the ballot paper Accounts in Forms 14 and 15 which are Exs. A and C on the record were prepared under his supervision and are correct. The Statement Ex. B regarding verification of votes polled for each candidate at this Constituency was also prepared under his supervision and he stated that it is correct. The Statement Ex. B is only a consolidation of the Statements contained in Forms Nos. 14 and 15. The contention contained in paragraph 23 of the petition *viz.*, that ballot paper accounts were not properly prepared by the Presiding Officers is negatived by the evidence of Sri D.P. Gupta. He further negatived the assertion made in paragraph 24 of the petition *viz.*, that during the counting of the votes the provisions of Rule 46 of the Representation of the People (Conduct of Election and Election Petitions) Rules, 1951 were not followed. He categorically stated that these rules were correctly followed by him. The various assertions made in the different sub paragraphs of paragraph 24 have been specifically met by the evidence of Sri D. P. Gupta and we have not the least doubt in our mind that these assertions are not correct and they do not in any way affect materially the result of the election. The same observation applies to the allegations made in paragraphs 25, 26 and 37 to 39 of the petition. Issue No. 7 has not at all been substantiated by the petitioner and the allegations contained in that issue do not materially affect the result of the election in any way.

This brings us ultimately to issue No. 9 which is to the effect as to whether the petitioner is entitled to any relief. In view of what we have held above we are clearly of opinion that the petitioner is not entitled to any relief and that the election petition should be dismissed.

ORDER BY THE TRIBUNAL

The election petition is accordingly dismissed. The petitioner shall pay Respondent No. 1 the cost of the petition inclusive of Rs. 1000/- as counsel's fee. The petitioner and Respondent No. 4 are to bear their own costs.

(Sd.) D. N. ROY, *Chairman.*

(Sd.) A. SANYAL, *Member.*

(Sd.) M. U. FARUQI, *Member.*

The 18th April, 1953.

ANNEXURE "A"

BEFORE THE ELECTION TRIBUNAL AT FAIZABAD

PRESENT :

Sri D. N. Roy—*Chairman.*Sri A. Sanyal—*Member*Sri M. U. Faruqi—*Member.*

ELECTION PETITION No. 267 OF 1952.

Sri Bhola Nath—*Petitioner**Versus*

1. Sri Krishna Chandra Gupta.
2. „ Nawabzada Haider Ali Khan.
3. „ Jagdish Chandra.
4. „ Nawal Behari.
5. „ Surya Datt.
6. „ Chandrika Prasad.
7. „ Gulzari Lal.
8. „ Shyam Kishore.
9. „ Gur Narain.—*Respondents.*

ORDER

This is an election petition filed by Sri Bhola Nath, who was one of the candidates for election to the Legislative Assembly of Uttar Pradesh from Sitapur South-East Constituency for the general election held in 1951-52, to get the election of the successful candidate, Sri Krishna Chandra Gupta, declared null and void and to get it declared that the petitioner was duly elected.

The respondents were duly served, but only Sri Krishna Chandra Gupta respondent No. 1 and Sri Nawal Behari respondent No. 4, have entered appearance and have filed their written statements. The former alone has contested the petition. The latter, Sri Nawal Behari, has lent support to the petition of Sri Bhola Nath.

The election in question was held on the 22nd of January, 1952. The result was declared on the 4th of February, 1952 by the Returning Officer under section 66 of the Representation of the People Act, 1951, declaring respondent No. 1 to have been duly elected. The result was published under section 74 of the Act in the U. P. Gazette of the 28th of March, 1952. The date for the filing of the return of election expenses was upto the 11th April 1952 ; but as the 11th of April was a public holiday on account of Good Friday, the returns of election expenses were accepted upto the 12th of April 1952, when these returns were published in the U. P. Gazette of the 3rd of May 1952 under Rule 113 of the Representation of the People (Conduct of Elections and Election Petitions) Rules 1951. The present petition by Sri Bhola Nath was filed on the 15th of May 1952 before the Election Commissioner of the Union of India. The election of respondent No. 1 has been assailed by the petitioner on a variety of grounds inclusive of corrupt and illegal practices. In his written statement, respondent No. 1 *inter alia* pleaded that the petition ought to be summarily dismissed in view of the provisions of section 90 (4) of the Representation of the People Act of 1951, because the petition is not framed and verified in accordance with the provisions of section 83(1) of the said Act and is not accompanied by any list signed and verified, setting forth full particulars of the corrupt and illegal practices alleged in the petition, as required by section 83(2) of the said Act. Nine issues were settled on the 4th of December, 1952 in the case, of which preliminary issues Nos. 1 to 4 and 6, which are as follows, have been heard by the tribunal:—

- (1) Is the petition liable to be rejected for want of proper verification ?
- (2) Is the petition liable to be rejected for non-compliance with the provisions of section 83(2) and section 117 of the Representation of the People Act, 1951 ?
- (3) Are the allegations of corrupt and illegal practices in paras. 27 to 36 vague and indefinite and should not be entertained for that reason ?
- (4) Can the allegations of corrupt and illegal practices in paras. 27 to 36 be entertained in absence of a list of such practices and in the absence of proper verification of such list as required by section 83 (2) of the Act ?
- (5) Was the nomination paper of respondent No. 1 invalid for the alleged reason that he has not appointed any election agent previous to the filing of the nomination paper as contemplated by section 40 of the Act ?

We shall take up issue No. 6 before we proceed to consider the other issues formulated above. We have looked into the nomination paper of respondent No. 1, that was delivered to the Returning Officer in the prescribed form as required by section 33 of the Representation of the People Act of 1951; and we are clearly of opinion that no invalidity attaches to the nomination paper. The nomination paper has been assailed on the ground that respondent No. 1 had not appointed any election agent previous to the filing of his nomination paper as contemplated by section 40 of the Representation of the People Act, 1951. That section lays down that every person nominated as a candidate at an election shall, before the delivery of his nomination paper under sub-section (1) of section 33, or under that sub-section read with sub-section (4) of section 39, as the case may be, appoint in writing either himself or some one other person to be his election agent. Sub-section (2) of section 40 lays down that when a candidate appoints some person other than himself to be his election agent, he shall obtain in writing the acceptance by such person of the office of such election agent. Section 33 (3) of the Representation of the People Act, 1951 says, that every nomination paper delivered under sub-section (1) shall be accompanied by a declaration in writing, subscribed by the candidate that the candidate has appointed as his election agent for the election, either himself or another person, who is not disqualified under this Act for the appointment, and who shall be named in the declaration, and by such other declarations, if any, as may be prescribed; and no candidate shall be deemed to be duly nominated unless such declaration is, or all such declarations are, delivered along with the nomination paper. In the present case the nomination paper was in the prescribed form [*vide* Rule 4 and Schedule II of the Representation of the People (Conduct of Elections and Election Petitions) Rules 1951]. It also contained the declaration by which respondent No. 1 stated that he appointed himself as his election agent; and such declaration was signed by him. What is contended on behalf of the petitioner is that a declaration alone was not sufficient and that another letter should have "accompanied" the nomination paper appointing himself as his election agent in order that it should have been a sufficient compliance with section 33 (3) and section 40 of the Representation of the People Act, 1951. We have looked into the provisions of sections 33 and 40, and of the Rules aforesaid, and we are clearly of opinion that the contention of the petitioner on this point is not at all sound. The Representation of the People Act, 1951, prescribes the Form of nomination paper (*vide* Rule 4 and Schedule II of the Act). The addition of Rule 11-A and Form 5-A of the Rules confirms us in our view that no change was effected in the form prescribed by Rule 4 and Schedule II of the Rules, which would cover the present case. Rule 4 says that every nomination paper shall be completed in the Form specified in Schedule II. Schedule II is what is called "the nomination paper". It is a comprehensive document containing 16 heads, specifying the name of the constituency, the name of the candidate, the name of the proposer, the name of the seconder and their signatures and certain other particulars, followed by a declaration by the candidate that he agrees to that nomination, further followed by "an appointment of an election agent", by which the candidate has to declare that he has appointed, either himself or some one else to be his election agent. Rule 11-A of the Rules lays down that when a candidate appoints in the manner provided by section 40, some person other than himself to be his election agent, such appointment shall be in Form 5-A. If we look to Form 5-A, we would find that it is a Form for appointing an election agent some one other than the candidate himself. The Form 5-A also prescribes that the person other than the candidate, if appointed as election agent, has to give his acceptance in writing of his appointment as such, and he has to sign such acceptance. Obviously, therefore, no separate form has been prescribed for appointing the candidate himself as his election agent other than the appointment and declaration contained on the Form of the nomination paper itself. Such a declaration is a declaration as prescribed by section 33 (3) of the Representation of the People Act, 1951. It is not necessary that the declaration should be contained on a separate chit of paper in order to fulfil the meaning of the word "accompanied" contained in section 33 (3). In the present case, the nomination paper that was delivered under section 33 sub-section (1) was accompanied by a declaration in writing, subscribed by the candidate that the candidate had appointed himself as his election agent for the election. Consequently, there was no breach of any provision of the Act or of the Rules; and it cannot for a moment be contended that the nomination paper of respondent No. 1 was invalid for the alleged reason that he had not appointed any election agent previous to the filing of his nomination paper as contemplated by section 40 of the Act. This ground of objection bears no substance whatsoever and must be completely repelled.

We would now come to deal with issue No. 1 which is to the effect as to whether the petition is liable to be rejected for want of proper verification. The petition of Sri Bhola Nath contained 41 paragraphs, the verification whereof is in the following terms :—

"That I Bhola Nath, son of Ganga Prasad do hereby verify that the contents of paragraphs 1 to 41 above are true to the best of my knowledge, and information, and belief and I affix my signatures this 15th day of May, 1952 at 12-20 hours in verification whereof.

BHOLA NATH,
Signature of petitioner."

It has been contended on behalf of respondent No. 1 that this is no verification at all, and consequently, it will be deemed that no proper election petition was made by Sri Bhola Nath. Section 83 of the Representation of the People Act, 1951 *inter alia* lays down that an election petition shall contain a concise statement of the material facts on which the petitioner relies, and shall be signed by the petitioner, and verified in the manner laid down in the Code of Civil Procedure 1908 (Act V of 1908) for the verification of the pleadings. Order VI Rule 14 and Rule 15 of the Code of the Civil Procedure respectively lay down that the pleading shall be signed by the party making the same and shall be verified at the foot by the party or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case. It further lays down that the person verifying shall specify by reference to the numbered paragraphs of the pleading what he verifies of his own knowledge and what he verifies upon information received and believed to be true. Order VI Rule 15 (3) of the Code of the Civil Procedure further lays down that the verification shall be signed by the person making it and shall state the date on which, and the place at which, it was signed. It would thus be obvious that the verification is of essential importance. If we look into the verification of the petition in the present case, we would find that the person verifying it did not state the place at which it was signed. The person verifying did not also specify by reference to the numbered paragraphs of the petition what he verified of his own knowledge and what he verified upon information received and believed to be true. Consequently, there can be no doubt whatsoever that the verification was not in accordance with Rule 15 of Order VI of the Code of the Civil Procedure. The question would be whether non-compliance with this provision would render the petition to be rejected. To overcome that obstacle the petitioner has made an application for amendment of the verification by which he has stated that the contents of paragraphs 1, 3, 4, 5, 6, 7, 8, 9, 20, 22, 24 (A) to (G), 31(A) to (E) and 41 are true to the best of his knowledge and paragraphs 10 to 19, 21, 25, 27 to 29, 31 to 40 are true to his belief on information received and paragraph 30 to be correct, both from knowledge and belief, and the first parts of paragraphs 2 and 23 are true to his knowledge, and the second parts of these paragraphs are true to belief on information received, and that the prayer portion of paragraph 41 is based on legal advice, which he believes to be correct. In this application for amendment, the petitioner has not supplied the deficiency as to where the verification originally made was signed by him as required by Rule 15 (3) of Order VI of the Code of Civil Procedure. It has, therefore, to be seen whether the amendment of the verification is at all necessary and whether it should or should not be allowed.

The powers of an election tribunal under the Representation of the People Act, 1951 in this respect are to our mind not co-extensive with the powers of a Court under the Code of Civil Procedure. An election petition calling in question an election has to be presented within the limited time prescribed in Rule 119 of the Representation of the People (Conduct of Elections and Election Petitions) Rules 1951. The election petition has to be presented to the Election Commission under section 81 of the Representation of the People Act 1951. Section 83 of the Act lays down that an election petition shall contain a concise statement of the material facts on which the petitioner relies and shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure. It further lays down that the petition shall be accompanied by a list signed and verified in like manner setting forth full particulars of any corrupt or illegal practices which the petitioner alleges, including as full a statement as possible as to the names of the parties alleged to have committed such corrupt or illegal practice, and the date and place of the commission of each such practice. Sub-clause (3) of Section 83 lays down that the Tribunal may, upon such terms as to costs and otherwise as it may direct at any time, allow "the particulars included in the said list" to be amended or order "such further and better particulars in regard to any matter referred to therein" to be furnished as may in its opinion be necessary for the purpose of ensuring a fair and effectual trial of the petition. Section 85 of the Act says that if the provisions of section 81, section 83 or section 117 are not complied with, the Election Commission shall dismiss the petition, provided that if a person making the petition satisfies the Election Commission that sufficient cause existed for his failure to present the petition within the period prescribed therefor, the Election Commission may in its discretion condone such failure. Section 90 (4) of the Representation of the People Act, 1951 says that notwithstanding anything contained in section 85, the Tribunal may dismiss an election petition which does not comply with the provisions of section 81, section 83 or section 117. Section 92 of that Act lays down that the Tribunal shall have the powers which are vested in a Court under the Code of Civil Procedure 1908, when trying a suit in respect of the following matters :

- (a) discovery and inspection ;
- (b) enforcing the attendance of witnesses, and requiring the deposit of their expenses
- (c) compelling the production of documents ;
- (d) examining witnesses on oath ;
- (e) granting adjournments ;
- (f) reception of evidence taken on affidavit ; and
- (g) issuing commissions for the examination of the witnesses.

It will, therefore, be obvious that the powers of the Tribunal as enunciated in section 92 of the Act are not co-extensive with all the powers conferred upon a Court under the Code of Civil Procedure. As we have already said, an election petition has to be presented before the Election Commission within the limited time prescribed in Rule 119 of the Rules. It has to contain a concise statement of the material facts on which the petitioner relies, accompanied by a list setting forth full particulars of any corrupt or illegal practices which the petitioner alleges, signed and verified in the manner laid down in the Code of Civil Procedure as enjoined in section 83 of the Act. If we examine the present petition, it would be obvious that the verification was not very happy and was not in full accordance with law. A similar question came to be considered by the Bombay High Court in *Prince Line Ltd. Versus The Trustees of the Port of Bombay* (A. I. R. 1950 Bombay 130); and there it was held, reviewing certain other previous decisions, that unless and until the defect is cured and the plaint is properly signed and verified, and thereafter presented to the Court it cannot be said that the suit has been instituted or filed in Court. It was further held that the Court has always got the discretion, if a plaint is not properly presented or is not signed or verified in accordance with the provisions of Order VI Rules 14 and 15 of the Code of Civil Procedure, to allow the plaintiff to remedy the defect at a later stage, and if the discretion is exercised by the court in favour of the plaintiff, the plea of bar of limitation which can be raised by the defendant may be reserved to the defendant, and in such a case if the amendment comes after the period of limitation prescribed for the plaint, the suit would be beyond time.

In *Sheo Deo Misra Vs. Ram Prasad* (I. L. R. XLVI Allahabad 637), it was held that a plaint which was filed without having been verified in the manner prescribed by the Code of Civil Procedure is not an invalid document but may be verified at a later stage of the suit even after the expiry of limitation.

In *Rajit Ram Vs. Kateshar Nath* (I. L. R. XVIII Allahabad 396), the verification of the plaint was in this form :—

“The contents of the petition of the plaint are true to the best of my knowledge and belief”.

It was held by a full Bench of the Allahabad High Court that this form of verification, though not free from ambiguity was in substantial compliance with the provision of section 52 of the Code of Civil Procedure. We accept the view taken in *Rajit Ram's* case and hold that although the verification of the election petition is somewhat defective, there was substantial compliance with Order VI Rule 15 of the Code of Civil Procedure and section 83 of the Representation of People Act, 1951. We are of opinion that the election petition should not be dismissed merely on the ground of defective verification. As it appears to us that under section 90 (4) of the Representation of the People Act, 1951, the question of dismissal of the petition is a matter for the Tribunal's discretion, and the Tribunal is not bound to dismiss an election petition for every non-compliance of sections 81, 83 and 117 of the Act and the test to be applied will be this that if the defect is trivial it will be condoned and if the defect is serious, the election petition will be dismissed.

We now come to deal with the 2nd, 3rd and 4th issues formulated above. These issues contain the question as to whether the allegations of corrupt and illegal practices in paragraphs 27 to 36 are vague and indefinite and should not be entertained for that reason, and also in the absence of a list of such practices and proper verification thereof as required by section 83(2) of the Representation of People Act 1951, and also for non-compliance of section 117 of that Act. Section 117 lays down that the petitioner shall enclose with the petition a Government Treasury receipt showing that a deposit of one thousand rupees has been made by him either in a Government Treasury or in the Reserve Bank of India in favour of the Secretary to the Election Commission as security for the costs of the petition. In the present case, the deposit that was made with the petition was a sufficient compliance within the meaning of section 117 of the Act. Consequently, it cannot be suggested that the petition should be rejected because of non-compliance of that section.

As regards the allegations of corrupt and illegal practices contained in paragraphs 27 to 36 of the petition, they are certainly supremely vague and indefinite, except in regard to certain allegations in para. 31, *viz.*, the allegations in sub-clauses (b), (c) and (e) and that portion of sub-clause (a) which states that “the election expenses return is *prima facie* incorrect as the opposite party No. 1 has not shown as the expenses of the general stamp regarding the declarations.” The present election petition is not accompanied by any list as required by section 83(2) of the Act. We have already quoted section 83 in the earlier part of this decision, and we may reiterate the same again. It lays down that an election petition shall contain a concise statement of the material facts on which the petitioner relies, and shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure for the verification of pleadings. It further lays down that the petition shall be accompanied by a list signed and verified in like manner setting forth full particulars of any corrupt or illegal practice which the petitioner alleges, including as full a statement as possible as to the names of the parties alleged to have committed such corrupt or illegal practice, and the date and place of the commission of each such practice.

In the present case what we have got is a petition without the full particulars of any corrupt or illegal practice, and without a full statement of the names of the parties alleged to have committed such corrupt or illegal practice and the date and place of the commission of each such practice. There was therefore a clear breach of the provision of section 83 of the Act, which in our opinion, cannot now be amended or rectified in the manner prayed for by the petitioner. The petitioner has, after the settlement of the issues in the case, moved an application purporting to be one under section 83 (3) of the Representation of the People Act, 1951, by which the deficiency stated above has been tried to be furnished by annexures "A" to "K" appended to that petition. Annexure "A" states the list of some of the Polling Booths where the Presiding Officers did not seal the boxes properly. Annexure "B" states the list of the Polling Stations with their booths where the votes were found in excess than were issued and should have been rejected. Annexure "C" states the list of the Polling Stations with the number of the booths where ballot papers were found short than were issued by the Presiding Officers, "showing either smuggling or tampering." Annexure "D" states the list of the *Panches*, village Headmen, *Mukhtas* and *Pradhans* alleged to have been employed by the respondent No. 1 as polling agents to exercise their undue influence over the voters in their respective areas. Annexure "E" states the list of some of the persons employed by respondent No. 1 whose expenses have not been shown by respondent No. 1 in his election return. Annexure "F" states the list of the meetings held in the constituency to support the candidature of respondent No. 1, the expenses of which have not been shown in the election return. Annexure "G" states the list of some of the booklets and posters used at the time of election by respondent No. 1, the expenses of which have not been shown in the election return. Annexure "H" states the refreshment and other things provided for the voters, workers and others. Annexure "I" states the names of certain police officials who are alleged to have exercised their influence in enlisting votes for respondent No. 1. Annexure "J" states that the petitioner's workers Kunj Behary Lal and Umrao Lal were offered bribe by the workers of respondent No. 1. Annexure "K" states certain details on which the election return of respondent No. 1 is wrong. The argument which has been advanced in support of this petition under section 83 (3) of the Representation of People Act 1951 showing these details is that if these details had been given originally with the presentation of the petition, the petition would have become too voluminous and that it would be more a matter of evidence to be gone into after proceedings have started before the Tribunal. A further argument has been advanced in support of this application to the effect that the corrupt practices, illegalities and irregularities have been known to respondent No. 1 and specific instances were therefore not necessary to be given in the original petition. This argument is on the face of it untenable. In fact section 83 of the Representation of the People Act, 1951, lays down in unequivocal terms that an election petition shall contain a concise statement of the material facts on which the petitioner relies, and shall also be accompanied by a list setting forth full particulars of any corrupt or illegal practice which the petitioner alleges, including as full a statement as possible as to the names of the parties alleged to have committed such corrupt or illegal practice and the date and place of commission of each such practice. It is not open to a petitioner making an election petition, in the teeth of the express provision of section 83 of the Act, to contend that the list was not given in the original petition containing full particulars because it would have made the petition cumbersome, or because it would only be a matter of evidence to be gone into without express pleading. We are clearly of opinion that the petition subsequently made under section 83(3) cannot be accepted and that the amendment sought for cannot be permitted. And we are fortified in our opinion by previous decisions of election petitions, both reported and unreported. In *Akyab (India Urban) 1928* (Case No. VI) (Burma Legislative Council) (Mr. S. Mahmud Vs. Mr. R. K. Ghose and another) (Hammond on Election Cases 1920-1935 page 47), the Election Tribunal held that the particulars of charges can only be amended by amplification or giving of further details and that where a petition gives no instances or particulars of a charge, these cannot be furnished later and no evidence can be adduced on it. In *Amritsar City (Muslim) 1924* (Case No. XIII) (Punjab Legislative Council) (Sheikh Mohammad Sadiq, Vs. Mian Muhammad Sharif) (Hammond page 85), it was held that it is not allowable to amend the list of particulars by including fresh instances of a similar kind, and that further details may be given with regard to the instance referred to in the original list. In *Bombay City (M. U.) 1924* (Case No. XXIII) (Bombay Legislative Council) (Mohammadally Allabux Vs. Jafferbhoy Abdullahoy Lalji and others) (Hammond page 175) at page 178, a supplementary list was admitted on the ground that the addition of further instance of the same charge—personation with connivance—does not constitute the making of a further charge of corrupt practices, but only gives further instances of the commission of the same charge of the particular corrupt practice of personation with connivance, and that it is in fact an amendment of the particulars of the corrupt practice which was originally alleged. In *Kangra-cum-Gurdaspur (M.R.) 1924* (Case No. LV) (Punjab Legislative Council) (Muhammad Fazal Khan Vs. Chaudhri Ali Akbar) (Hammond page 437), it was laid down that an election petition cannot be amended, but the commissioners have the power to call for further and better particulars. At page 440 of the report, it was held, upon an analogous provision as contained in Section 83 of the present Act of 1951, that the law gives us power to call for further and better particulars, if we so desire; but this power refers only to the 'particulars' and not to the 'petition' that the present rule is clearer and more stringent and requires that the petition shall contain the material facts and shall be accompanied by a list "setting forth full particulars of

y corrupt practice which the petitioner alleges, including as full a statement as possible as to the names of the parties alleged to have committed any corrupt practice and the date and place of the commission of each such practice; that this rule gives a very clear indication as to what the petitioner is required to do; that this is as it should be, for no person should be allowed to liver particulars which contain nothing but the name of the candidate and the character of the offence suggested and leave everything else blank and open to an attempt under them to fish out some possible material from which the blank may be filled up, and that to allow this would be allowing an abuse of procedure. In *Kistna (N.-M. R.) 1928 (Case No. LVII) (Madras Legislative Council) (Babha Ventaka Sehayya and another Vs. Mirzapuram Raja Garu alias Venhata-m amyya Appa Rao Bahadur Garu and others) (Hammond page 449)*, it was laid down that a petitioner must state at the outset the particulars on which his allegations are based and that the Court's power of amendment does not extend to adding a fresh instance not covered by the allegations in the petition. At page 451 of that report, it was observed that the rule does not say "list of particulars" but, in very precise terms, "particulars included in the list"; that adding to the particulars included in the list is not amending them; that those original particulars are left just as they stood, quite unamended; but new ones are added, and that it would amount to amendment of the list but not of the particulars. In that case amendment was refused.

In *Saharanpur (N.-M. R.) 1920 (Case No. LXXX) (United Provinces Legislative Council) (Lala Chaman Lal Vs. Lala Shadi Ram) (Hammond page 623 at page 624)*, the Tribunal repelled the argument of learned counsel for the petitioner that "his client had fallen into the error owing to his efforts to attain conciseness," and amendment was refused on the ground that it would be contrary to the whole tenor and spirit of the election law; that the short time limit permitted and the insistence in the rule on the furnishing at once of the full particulars are evidently intended to insure that the returned candidate shall, without any delay, be informed of the exact nature of the case against him and of the charges which he will have to meet, and that to allow amendment and additions would be to defeat this very salutary provision.

Coming now to more recent cases, we may refer to Election Petition No. 83 of 1952 (*Shri Purshotamdas Ranchhodass Patel Versus Shantilal Girdharlal Parikh and others*) published in the *Gazette of India Extraordinary Part I, Section 1, dated 10th October, 1952, page 2262*. The Tribunal held in deciding that case that when section 83(2) of the Representation of the People Act 1951 provides that a verified list shall accompany the petition, the general provisions of the Civil Procedure Code under Order VI and Order VII cannot be invoked to override that special mandatory provision and permit the filing of a subsequent list not accompanying but following the petition. The Tribunal further held that when the list is to accompany a petition, and the petition is to be filed within the time specified in Rule 119, it does come to this that the list is to be filed within that period of limitation and that allowing a new list to be filed would be tantamount to permitting the petitioner to make allegations about corrupt and illegal practices after the period of limitation.

In Election Petition No. 77 of 1952 (*Shri Kanaiyalal Durlabhram Bhansali Vs. Papatlal Mulshanker Joshi*) (published in the *Gazette of India Extraordinary—Part I, Section 1, dated 14th October, 1952 at page 2272a*), the Tribunal held that the provision in the Representation of People Act 1951 in regard to full particulars in the list to be attached to the petition is a mandatory provision framed with a view of giving the earliest possible notice of the charges relied upon by the petitioner to the respondent and to indicate the place where the respondent should look for them; that the words "shall be accompanied" in section 83(2) indicate that the filing of a list accompanying the petition containing particulars of corrupt and illegal practices is obligatory on the petitioner who relies on any such practice for getting the election set aside thereby; that there is no provision to file a fresh list, but section 83(3) provides for the particulars included in the list to be amended; that what the Act permits "is not the amendment of the list" but "amendment of the particulars, and that too of the particulars included in the list," and that this further indicates that the framers of the Act considered it absolutely mandatory that the particulars be included in the list accompanying the petition and not in the petition itself; and that if the intention was that the filing of the list was a mere matter of form and the particulars could be stated in the petition section 83(3) would not have restricted the amendment of the particulars to the particulars stated in the list only.

A petitioner cannot plead that at the time of presenting his petition, it was impossible to get any particulars at all; for if such a plea were to be allowed, then the whole object of the Act would be frustrated. It is therefore obvious that a petitioner must state at the outset the particulars on which his allegations are based. In this connection reference may be made to the observation made at page 381 of *Nanak Chand's Law of Election and Election Petition in India (First Edition 1951)*. It necessarily follows that if particulars are not given those paragraphs in the petition or in the list which lack in particulars and which deal with corrupt and illegal practices should be struck off. In *Bulandshahar district (East) 1921 (Case No. XXVII) (U. P. Legislative Council) (Chaudhri Amar Singh Vs. Pandit Nanak Chand)* reported at page 219 of *Hammond's Election Cases in India and Burma 1920—1935*, it was contended that the word "particulars" was restricted in the relevant rule to "corrupt practices" and the facts alleged were mere irregularities. The Commissioners held that they were not prepared to dispense

with the concise statement of material facts required by the rule and they were not in a position to accept the allegation contained in the petition as containing no statements of facts whatsoever on that point. The Commissioners accordingly directed that those paragraphs of the petition which did not give a concise statement of the material facts as required by rules be struck off. The Commissioners opined that it would be a dangerous precedent to encourage any laxity with regard to the rule.

Applying the test of the principles stated above, and looking at the allegations of corrupt and illegal practices contained in paragraphs 27 to 36 of the petition, which, as we have already said, are extremely vague and indefinite, except in regard to certain allegations in paragraph 31, namely, the allegations in sub-clauses (b), (c) and (e) and that portion of sub-clause (a) which states that "the election expenses return is *prima facie* incorrect as the opposite party No. 1 has not shown as the expenses of the general stamp regarding the declarations," we are of opinion that the rest of the allegations contained in this paragraph should be struck off. We, therefore, hold that the petition is not liable to be rejected for non-compliance with the provisions of section 83 (2) and section 117 of the Representation of the People Act, 1951; that the allegations of corrupt and illegal practices in paragraphs 27 to 36 are vague and indefinite, save and except some of the allegations in paragraph 31 as specified above, and those allegations should not be entertained in the absence of a list; and that since those allegations of corrupt and illegal practices are suffering from want of particulars; they cannot be entertained.

We accordingly refuse to accept the application dated 4th December, 1952 together with its annexures purported to have been made under section 83 (3) of the Representation of the People Act, 1951 and we also reject the application dated 20th December, 1952 for amendment of the verification. We direct that paragraphs 27, 28, 29, 30, 31 [save and except clause (b), (c) and (e) and that portion of clause (a) which states that "the election expenses return is *prima facie* incorrect as the opposite party No. 1 has not shown as the expenses of the general stamp regarding the declaration."] and paragraphs 32, 33, 34, 35 and 36 of the election petition dated the 15th of May 1952 which suffer from want of particulars be struck off.

(Sd.) D. N. ROY, *Chairman*.

(Sd.) A. SANYAL, *Member*.

(Sd.) M. U. FARUQI, *Member*.

This 17th January, 1953.

[No. 19/267/52-Elec. III/5684.]

By Order,

P. R. KRISHNAMURTHY, *Asstt. Secy.*